

applicable to the subject matter of the pending claims, and did not teach the features for which the Office Action relied upon that reference as allegedly teaching. In response, a very detailed Advisory Action was mailed that addressed several of the arguments set forth in Applicants' Request. In reply, Applicants filed a Notice of Appeal and Pre-Appeal Brief Request for Review on October 25, 2007. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on December 20, 2007 indicating that prosecution regarding this application was reopened. The March 17 Office Action, to which this Request responds, is the first Office Action mailed since the Notice of Panel Decision.

The Office Action, on page 2, rejects claims 1-3, 5-8, 11-13, 15, 16, 18, 19 and 22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0123344 A1 to Criqui et al. (hereinafter "Criqui") in view of Montebruno. This rejection is respectfully traversed.

Criqui teaches a cellular mobile telephone system that can be used on board a vehicle (to include an aircraft) (Abstract). The Office Action, with vague reference to the single figure of Criqui, alleges that Criqui teaches a mobile platform high-speed broadband communications system with many of the features recited in the pending claims. The Office Action concedes, however, that Criqui fails to disclose the recited forward link signal using a signaling rate in a range from 512 kbps to 3.5 Mbps. For this concession alone, it is clear that Criqui fails to teach a mobile platform high-speed broadband communications system, even to the extent that the Office Action attempts to allege that it does. Criqui is limited to teaching a cellular mobile telephone system. To expand this disclosure to allegedly encompass high-speed broadband communications systems is improper. In fact, at paragraph [0026] Criqui asserts that the onboard base station system BSS1 is similar to a conventional GSM base station system such as the base station system BSS2, which is located at a ground station in Criqui.

As indicated above, the Office Action concedes that Criqui fails to disclose the forward link signal using the recited signaling rate. Further, the Office Action concedes that Criqui fails to disclose that the return and forward signal are being transmitted on the same frequency. The Office Action rather relies on Montebruno as allegedly teaching these features. The Office Action then concludes that it would have been obvious to incorporate the teachings of Montebruno into the method of Criqui in order to provide a wider bandwidth of communication. The analysis of the Office Action fails for at least the following reasons.

First, Criqui is intended to address a very specific problem. There is no suggestion that Criqui be expanded beyond what it can reasonably be considered, on its face, to teach.

Second, as Applicants argued previously Montebruno, while teaching, in for example paragraph [0006], an overlapping range of signaling rates, includes an axis subsystem (AST) singling out a coverage area of a cellular network (see paragraph [0001]). Montebruno is specifically directed at "avoiding traffic saturation in the terrestrial transport network" (see paragraph [0052]). For this disclosure alone, one of ordinary skill in the art would not have recognized any advantage from Montebruno, or even compatibility of Montebruno with the mobile system described in Criqui.

Third, Montebruno, in paragraph [0054], discusses the leasing of similar channels or satellite transponders or parts of the transponders being particularly cost effective. It is for this reason that it is reasonable to conclude from the disclosure of Montebruno that its failure to explicitly teach a single frequency for transmission and reception of data via a single transponder in a satellite cannot be reasonably inferred from the disclosure. The Office Action does not even address the bi-directional transmission via a single transponder, and asserts that paragraph [0068] somehow can be relied upon as teaching that the return signal and the forward link signal are transmitted on a same frequency. Paragraph [0068] of Montebruno teaches that the telecommunications network according to the invention may

find applications with wireless LAN, like that supported by Bluetooth, or WECA (Wireless Ethernet Compatibility Alliance) or other like systems. That paragraph goes on to state that signals of each of these protocols can be carried through low mobility picocells access subsystems of UMTS (or GPRS) networks. There is nothing in paragraph [0068], or otherwise in Montebruno, that can reasonably be considered to explicitly teach the return signal and the forward link signal being transmitted on a same frequency and via a same transponder in the satellite, as is alleged by the Office Action. In this regard, the Office Action must be relying on some theory of implicit, or inherent, teaching. If this is the case, as it must be based on the failure of Montebruno to explicitly teach the feature, the Office Action's analysis fails to apply a proper standard for a showing that the feature, not explicitly disclosed, is inherently disclosed in the Montebruno reference. Federal Circuit precedent, as quoted in MPEP §2112, instructs that inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. In relying upon a theory of inherency, the Examiner must provide "a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" (emphasis in the original, citations excluded). Such is not adequately shown in this Office Action.

Fourth, the assertion that it would have been obvious to combine the references in the manner suggested in order to provide a wider bandwidth for communication is merely a conclusory statement made in the Office Action with no evidentiary basis. Even in the aftermath of *KSR*, such an assertion without any articulated reasoning why the combination would have been predictably made based on some objective evidence is improper. This merely conclusory statement asserted by the Office Action does not meet any of the criteria for any of the rationales set forth in the Patent Office's guidance to its Examiners in the aftermath of *KSR*, as incorporated into the MPEP.

In reply to the Applicants' previously having argued why the Montebruno reference is not applicable to the subject matter of the pending claims, the October 16, 2007 Advisory Action convolutes, and mischaracterizes, Applicants' arguments specifically with regard to a single transponder in the satellite. The Advisory Action indicates that "[t]he Examiner respectfully disagrees with Applicants' statements and asserts that Montebruno et al. discloses that the satellite interconnection GSB, transponder, is used for communication between the mobile terminal and the satellite system (paragraph 49, lines 11-26)." Regardless of the accuracy of this statement, it does not teach, nor reasonably would it have suggested, that a single transponder is employed to provide bi-directional communication on a single frequency in the manner recited by the pending claims. In other words, regardless of the construction given to this disclosure in Montebruno, it has not been adequately shown that Montebruno can reasonably be considered to teach the feature upon which the Office Action relies upon that reference as teaching. Specifically, Montebruno cannot reasonably be considered to teach, or to have suggested, the return signal and the forward link signal being transmitted on a same frequency and via a same transponder in the satellite, as is positively recited, among other features, in independent claims 1, 11 and 18. As explained in the background section of Applicant's disclosure, this was not the state of the art at the time of this invention.

Finally, there is nothing in Criqui that can reasonably be considered to teach, or to have suggested, the return signal requesting and the forward signal enabling broadband communication with the one or more individual data terminal devices, as is recited in the pending claims. The Office Action cites paragraphs 20, 21 and 23 as allegedly disclosing such a feature. There is nothing in any of these paragraphs, or otherwise taught by Criqui, that can reasonably be considered to teach, or to have suggested, the return signal requesting and the forward signal enabling broadband communication. In fact, as is asserted above, the

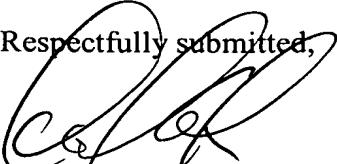
Office Action specifically indicates that Criqui fails to disclose the forward link signal using a signaling rate in a range from 512 Kbps to 3.5 Mbps, i.e., broadband communications.

Based on the foregoing, the combination of Criqui and Montebruno, to any extent that they are even combinable, cannot reasonably be considered to have suggested the combinations of all of the features positively recited in independent claims 1, 11 and 18. Further, claims 2, 3, 5-8, 10, 12, 13, 15, 16, 19 and 22 also would not have been suggested by any permissible combination of the applied references for at least the respective dependence of these claims directly or indirectly on allowable base claims, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-3, 5-8, 11-13, 15, 16, 18, 19 and 22 under 35 U.S.C. §103(a) as being unpatentable over Criqui in view of Montebruno are respectfully requested.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 5-8, 10-13, 15, 16, 18, 19 and 22 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,


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